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Need-Narrowness-Intrusiveness under the Prison Litigation Reform Act of 1995

Blake P. Sercye
Blake.Sercye@chicagounbound.edu

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Blake P. Sercye†

INTRODUCTION

California's prisons are massively overcrowded. The California Department of Corrections and Rehabilitation (CDCR) has twelve reception centers.[1] In 2008, all of the CDCR reception centers except for one operated at near or over 200 percent design capacity.[2] Two of the reception centers operated at 300 percent design capacity.[3] As a result, CDCR reception centers are unable to adequately screen and treat the health problems of inmates.[4] Moreover, doctor-patient confidentiality is greatly compromised at CDCR facilities as health interviews and psychological examinations often are conducted in small offices.[5] Several experts agree that overcrowding in CDCR facilities has made providing appropriate physical and mental health care nearly impossible.[6] For example, these issues are particularly problematic when considering that inmates during the last few years have spent more time in CDCR reception areas than in the past.[7] Thus, reception areas subject inmates to the negative effects of overcrowding now more than ever.

Although inmates can seek redress in federal courts if state prison conditions violate their constitutional rights,[8] the legitimate claims of inmates can be overlooked among so many prisoner complaints that are without merit. Prisoner litigation comprises a disproportionate share of filings in federal district

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† AB 2008, Princeton University; JD Candidate 2011, The University of Chicago Law School.

1 *Coleman v Schwarzenegger*, 2009 WL 2430820, *35 (ED Cal).

2 Id.

3 Id.

4 Id at *35.

5 *Coleman*, 2009 WL 2430820 at *36.

6 See generally id at *33–34.

7 Id at *37.

8 *Jones v Block*, 549 US 199, 203 (2007).

courts.[9] Including habeas corpus petitions and motions to vacate a sentence, prisoner litigation constituted 24 percent of federal civil filings in 2005.[10] Congress sought to quell this problem with the enactment of the Prison Litigation Reform Act of 1995 ("PLRA").[11] In order to reduce the frequency of frivolous claims the PLRA mandates early judicial screening and exhaustion requirements before cases can reach court.[12] Consequently, most litigation and scholarship surrounding the PLRA concerns the Act's exhaustion requirement.[13]

Recently, however, prisoners have made other elements of the PLRA the subject of litigation—namely the parts of the Act that concern injunctive relief and prisoner release orders. While Congress enacted the PLRA predominantly as a means of eliminating meritless lawsuits, the PLRA also places strict limits on the remedies courts can offer inmates. Specifically, the PLRA requires courts to conduct two main inquiries when determining whether to issue prisoner release orders.

First, the court must determine that overcrowding is the primary cause of the violation of a federal right.[14] Second, a prisoner release order can only be issued if it is a sufficiently narrow and nonintrusive remedy for the violation.[15] Determining whether relief is sufficiently narrow requires an inquiry into whether the relief to be ordered will be limited in scope and form. Relief is sufficiently narrow in scope if it remedies only violations that have been established by the plaintiffs.[16] The court's inquiry into whether the form of relief is sufficiently narrow concerns whether the relief to be ordered extends the court beyond its proper authority or is too restrictive on the legislature implementing the order. Taken together, these requirements are commonly referred to as the "need-narrowness-intrusiveness"

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[9] *Woodford v Ngo*, 548 US 81, 94 n 4 (2006) (noting that between 2000 and 2005, prisoner civil rights and prison conditions cases represented between 8.3 percent and 9.8 percent of the new filings in the federal district courts, averaging out to about one new prisoner case every other week for each of the almost 1,000 active and senior district judges).

[10] *Jones*, 549 US at 203 n 1.

[11] Pub L No 104-134, 110 Stat 1321-66 (1996).

[12] *Jones*, 549 US at 203.

[13] See, for example, Kermit Roosevelt III, *Exhaustion under the Prison Litigation Reform Act: The Consequence of Procedural Error*, 52 Emory L J 1771 (2003).

[14] 18 USC § 3626(a)(3)(E)(i).

[15] 18 USC § 3626(a)(1)(A).

[16] See *Coleman*, 2009 WL 2430820 at *76.

standard.[17] Finally, the court must give adequate consideration to how issuing a release order will affect the public.[18]

While the PLRA lays out the "need-narrowness-intrusiveness" standard, it is unclear what facts in a given case courts should consider in determining whether the prospective relief offered is sufficiently narrow in scope and form. In *Coleman v Schwarzenegger* and *Plata v Schwarzenegger*[19] the court held that overcrowding was the primary cause of the violation of prisoners' constitutional rights.[20] After consolidating the cases, a three-judge panel of the United States District Court for the Eastern and Northern Districts of California issued a prisoner release order giving Governor Arnold Schwarzenegger forty-five days to submit a prison population reduction plan for the state.[21] Explaining the PLRA standard for prospective relief, the panel stated that the PLRA requirements are simply codifications of the common-law approach to injunctive relief.[22] While this appears to be the case for the public-interest inquiry, a careful examination of case law reveals that the factors considered in applying the need-narrowness-intrusiveness standard in *Coleman* and *Plata* differ from the considerations used by some courts at common law. In *Coleman* and *Plata*, the court looked beyond the conditions of the prison the suing inmates inhabited by looking to the prison system as a whole when determining whether the relief was sufficiently narrow.[23] In contrast, the common-law approach, labeled as the "totality-of-the-circumstances" approach in *Rhodes v Chapman*,[24] suggests that only the cumulative effects of prison life and the interworking of the prison or prison system at issue should be considered as part of the need-narrowness-intrusiveness inquiry.[25]

Whether a court can look beyond the conditions of the prison or prison system at issue will have a direct effect on the court's determination that a prison violates a constitutional right and whether a prison release order is adequately narrow in scope and

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[17] Id.

[18] 18 USC § 3626(a)(1)(A).

[19] 2009 WL 330960, *1 (ED Cal) (consolidating *Coleman v Schwarzenegger* and *Plata v Schwarzenegger*).

[20] Id at *62.

[21] *Coleman*, 2009 WL 2430820 at *116.

[22] *Coleman*, 2009 WL 2430820 at *30 (quoting the legislative record describing the PLRA as "not a departure from current jurisprudence concerning injunctive relief").

[23] See generally id.

[24] 452 US 337 (1981).

[25] Id at 362–63 (Brennan concurring).

form. For example, the *Coleman* and *Plata* approach and the totality-of-the-circumstances approach would yield different results as to whether the scope of relief is sufficiently narrow. Since the totality-of-the-circumstances approach limits consideration to the inner workings of prisons and prison systems, the relief offered is narrowly tailored to the plaintiffs at suit. Conversely, the court in *Coleman* and *Plata* openly admitted that the prisoner release order would directly affect prisoners who are not members of the plaintiff class. It is clear that the factors courts consider in examining the need-narrowness-intrusiveness requirement will have a direct effect on whether courts issue a prisoner release order and how prison systems are required to implement the order.

While the decision in *Coleman* and *Plata* has brought California to the forefront, prison overcrowding is an issue in almost every state. As national prison populations increased in 2006, states increased spending on prisons by 10 percent.[26] This spending, however, decreased nationally as state budgets shrunk in light of the economic downturn in late 2008.[27] This decrease in spending affected prisons directly; at least 26 states reduced funding for retention facilities, leading to job cuts, changes in the contents of prisoner meals, and a focus on alternatives to imprisonment.[28] In some instances, states have closed entire prisons,[29] leading to increased overcrowding in remaining facilities. Consequently, as states cut funding for prisons it is very likely that courts in states other than California will consider issuing release orders.[30]

This Comment proceeds as follows. Part I provides an overview of the PLRA, *Coleman*, and *Plata* while focusing specifically on the scope and form of relief elements of the "need-narrowness-

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[26] John Gramlich, *States Seek Alternatives to More Prisons*, Stateline.org (June 18, 2007), online at http://www.stateline.org/live/details/story?contentId=217204 (visited Oct 3, 2010).

[27] John Gramlich, *At Least 26 States Spend Less on Prisons*, Stateline.org (Aug 11, 2009), online at http://www.stateline.org/live/details/story?contentId=418338 (visited Oct 3, 2010).

[28] Id.

[29] Pamela M. Prah, *States Plug Budget Holes, For Now*, Stateline.org (Aug 17, 2009), online at http://www.stateline.org/live/details/story?contentId=419384 (visited Oct 3, 2010).

[30] On the growth of prison systems and the damage inflicted on prisoners by overcrowding, see generally Craig Haney, *The Wages of Prison Overcrowding: Harmful Psychological Consequences and Dysfunctional Correctional Reactions*, 22 Wash U J L & Pol 265 (2006) (describing Texas as experiencing rates of prison growth comparable to California).

intrusiveness" standard. Part II describes in greater detail the differences in the common-law approach and the approach of the three-judge panel in *Coleman* and *Plata*. Specifically, this section examines how the differing approaches affect courts' determinations of whether a prison system violates a constitutional right and whether a prisoner release order is sufficiently narrow in scope and tailored to the complaints brought forth by plaintiffs. This section also discusses how the different approaches can result in varying determinations of whether a prisoner relief order is narrow in form.

Part III offers a framework that courts can use to reconcile the differing methods used by courts in determining whether to issue prisoner release orders under the PLRA. This Comment's proposed solution would force prisoner release orders to require those prisoners whose constitutional rights the state is violating to either be released from prison or receive increased medical care as a direct result of other prisoners' release. The solution helps ensure that the relief courts offer is narrow in scope by trying to limit the effects of the relief granted to only members of the plaintiff class and those persons affected by constitutional violations. The proposed solution also ensures that remedies are adequately narrow in form by limiting the considerations that courts can take into account when issuing prisoner release orders.

I. BACKGROUND: AN OVERVIEW OF THE PLRA AND THE "NEED-NARROWNESS-INTRUSIVENESS" REQUIREMENT

A. Prison Litigation Reform Act of 1995

The Prison Litigation Reform Act of 1995 ("PLRA") limited the circumstances under which a court may issue a "prisoner release order" as a remedy in "any civil action with respect to prison conditions."[31] The PLRA represented a shift from broad equity jurisdiction of the federal courts toward statutory guidelines limiting the circumstances for prisoner release orders.[32] A "prisoner release order" is defined as "any order, including a temporary restraining order or preliminary injunctive relief, that has the purpose or effect of reducing or limiting the prison

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[31] 18 USC § 3626(a)(3).

[32] *Gilmore v California*, 220 F3d 987, 998–99 (9th Cir 2000).

population, or that directs the release from or non-admission of prisoners to a prison."[33]

Procedurally, a plaintiff seeking relief with respect to prison conditions can request that a three-judge court issue a prisoner relief order, or a federal judge can, sua sponte, "request the convening of a three-judge court to determine whether a prisoner release order should be entered."[34] The PLRA only permits the judge to request that a three-judge court convene under limited circumstances, however, and also limits the circumstances under which the three-judge court can issue a prisoner release order. Specifically, the PLRA has three main requirements as to when the three-judge can issue a release order. First, the PLRA states that "no court shall enter a prisoner release order unless a court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the Federal right sought to be remedied through the prisoner release order."[35] Second, a court cannot issue a prisoner release order unless the defendant "has had a reasonable amount of time to comply with the previous court orders."[36] Third, a court can only issue a prisoner release order if it finds "by clear and convincing evidence" that "crowding is the primary cause of the violation of a Federal right" and "no other relief will remedy the violation of the Federal right."[37]

The PLRA further requires that a prisoner release order (like all prospective relief ordered pursuant to the PLRA) be "narrowly drawn, extend[] no further than necessary to correct the violation of the Federal right, and [be] [] the least intrusive means necessary to correct the violation of the Federal right."[38] Additionally, the PLRA states that courts must give "substantial weight to any adverse impact on public safety or the operation of the criminal justice system" that would be caused by the issuance of a prisoner release order.[39]

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[33] 18 USC § 3626(g)(4).

[34] 18 USC § 3626(a)(3)(C) & (D).

[35] 18 USC § 3626(a)(3)(A)(i).

[36] 18 USC § 3626(a)(3)(A)(ii).

[37] 18 USC § 3626(a)(3)(E)(i) & (ii).

[38] 18 USC § 3626(a)(1)(A). See also *Armstrong v Davis*, 275 F3d 849, 872 (9th Cir 2001); *Smith v Arkansas Department of Correction*, 103 F3d 637, 645–46 (8th Cir 1996); *Williams v Edwards*, 87 F3d 126, 133 n 21 (5th Cir 1996); compare with *Lewis v Casey*, 518 US 343, 357–60 (1996).

[39] 18 USC § 3626(a)(1)(A).

B. "Need-Narrowness-Intrusiveness"

While the requirement that courts give consideration to public safety is fairly straightforward, the "need-narrowness-intrusiveness" requirement is less clear. The PLRA requires courts to ensure that the prisoner release order requested by plaintiffs extend no further than necessary to remedy the constitutional violation.[40] The need-narrowness-intrusiveness inquiry is best understood as being composed of two elements: scope of relief and form of relief.

1. Scope of relief.

The scope of relief element of the need-narrowness-intrusiveness test is concerned with the breadth of relief courts may give. When system-wide relief is requested by plaintiffs, the critical inquiry for determining the proper scope of injunctive relief is whether the established constitutional violation "is in fact 'widespread enough to justify system wide relief.'"[41] The remedy that a court grants must be limited to the injuries established by the plaintiffs in court.[42] Thus, a system-wide remedy like a prisoner release order is only acceptable if the plaintiffs have established a system-wide injury.[43]

2. Form of relief.

An assessment of the proper form of relief takes into consideration whether the court is using means that are beyond its authority or too restrictive for implementation by the state. In essence, this part of the test seeks to ensure confinement of judicial power and respect for the discretionary authority of state officials.[44] The form of relief must be sufficiently flexible to be the least intrusive means necessary to correct the constitutional violation at issue.[45]

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[40] See *Coleman*, 2009 WL 2430820 at *79 (stating that the PLRA and equitable principles require the court to "ensure that the population reduction sought by plaintiffs extends no further than necessary to rectify the unconstitutional denial of medical and mental health care to California's prisoners").

[41] *Armstrong*, 275 F3d at 870, quoting *Lewis*, 518 US at 359.

[42] *Lewis*, 518 US at 357–60 (1996) (explaining that the remedy in a prison conditions case must address only actual injuries that have been identified by plaintiffs in court).

[43] See, for example, *Columbus Board of Education v Penick*, 443 US 449, 465–67 (1979); *Armstrong*, 275 F3d at 870–72; *Smith*, 103 F3d at 645–46 (8th Cir 1996).

[44] *Bounds v Smith*, 430 US 817, 832–33 (1977); *Lewis*, 518 US at 362–63.

[45] See 18 USC §3626(a)(1)(A). See, for example, *Lewis*, 518 US at 362, quoting *Bell v Wolfish*, 441 US 520, 562 (1979) (chiding the lower court for becoming "enmeshed in the

II. "NEED-NARROWNESS-INTRUSIVENESS" UNDER THE PLRA IN *COLEMAN* AND THE "TOTALITY-OF-THE-CIRCUMSTANCES" TEST

While the PLRA as applied in *Coleman* and *Plata* is similar to the common-law "totality-of-the-circumstances" considerations for issuing prisoner release orders, there are significant differences between the two approaches. Specifically, the *Coleman* and *Plata* approach permits courts to take into account factors beyond the conditions of the prison or prison system in the case at hand when determining whether to grant injunctive relief. Conversely, the common-law "totality-of-the-circumstances" approach is much narrower and suggests that courts focus only on the relative conditions within a prison or prison system.

A. The *Coleman* Court's Approach to "Need-Narrowness-Intrusiveness" under the PLRA

In *Coleman v Schwarzenegger*, a three-judge court of the Eastern and Northern Districts of California held that overcrowding was the primary cause of the violation of prisoners' constitutional rights.[46] The panel issued a prisoner release order giving Governor Arnold Schwarzenegger forty-five days to submit a prison population reduction plan for the state.[47] The order requires the plan to reduce the number of prisoners in facilities operated by the California Department of Corrections and Rehabilitation ("CDCR") to 137.5 percent of the facilities' combined design capacity within two years.[48] On September 11, 2009, Governor Schwarzenegger filed an application for a stay with the United States Supreme Court concerning the panel order.[49] The three-judge district court indicated that it would not implement its final order until the Supreme Court has reviewed the district court's decree in *Coleman v Schwarzenegger*.[50]

1. *Plata* and the establishment of unconstitutional health care conditions.

The *Plata* prisoner relief order follows from the failure of the California prisons to provide constitutionally adequate health

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minutiae of prison operations" in fashioning an overly intrusive remedial order).

[46] *Coleman*, 2009 WL 2430820 at *62.

[47] Id at *116.

[48] Id.

[49] *Schwarzenegger v Coleman*, 130 S Ct 46, *1 (2009).

[50] Id.

care for prisoners.[51] The plaintiffs argued that the inadequate health care caused "severe and unnecessary pain, injury and death" in the state's prisons.[52] Specifically, the plaintiffs claimed that the prisons were deficient because of inadequate medical screening of incoming prisoners, delays in providing access to medical care, slow response to medical emergencies, and an inability to maintain an adequate medical staff, among other problems.[53] After the original *Plata* filing the parties stipulated to injunctive relief that would initially require the defendants to implement improved policies and procedures throughout seven prisons in the state, with more prisons to follow.[54] Under the stipulation the improvements only needed to meet the minimal medical care required for prisoners under the Eight Amendment of the Constitution.[55]

After years of noncompliance, the court issued an order to show cause ("OSC") to the state of California to show why it was not in civil contempt of the injunctive order.[56] The state claimed that it had plans to outsource medical relief, but the court was unsatisfied because such a plan would only become effective after several years.[57] Unconvinced of the CDCR's ability to manage the medical needs of the state's prison population, the court put the medical delivery system of the prisons in receivership.[58]

2. *Coleman* and the establishment of unconstitutional mental health care conditions.

The *Coleman* prisoner release order follows from CDCR violations of the Eighth Amendment based on its failure to provide adequate health care to inmates with mental disorders.[59] The Eighth Amendment violation was based on several

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[51] *Coleman*, 2009 WL 2430820 at *3.

[52] Id.

[53] Id at *4.

[54] Id.

[55] *Coleman*, 2009 WL 2430820 at *4.

[56] Id at *7.

[57] Id.

[58] Id at *6–8 (describing San Quentin prison in Marin County, California as not complying at all with the court order); *Plata v Schwarzenegger*, 2007 WL 2122657, *7–9 (ND Cal) (stating that in some prisons medical facilities lacked the equipment to perform routine exams and many clinics did not meet basic sanitation standards. Worse yet, death reviews revealed that "repeated gross departures from [] minimal standards of care" lead to high levels of morbidity for almost any "significant injury, harm, or medical complication").

[59] *Coleman*, 2009 WL 2430820 at *12.

inadequacies in the CDCR's handling of patients with mental illness. Firstly, the court highlighted delays in access to necessary mental health care.[60] The court specifically noted that there were "backlogs of 300-400 inmates awaiting transfer to enhanced outpatient programs."[61] Secondly, the court observed that the CDRC lacked a "systematic program for screening and evaluating inmates for mental illness."[62] The court also found that the CDCR's supervision of medication use was inadequate as prescriptions were not refilled in a timely fashion among other problems.[63] Finally, the court observed that the CDCR's record keeping was highly disorganized and several treatment plans were incomplete or nonexistent.[64]

Despite the extensive efforts of a Special Master appointed by the court, the CDCR was unable to remedy the constitutional violations. [65] The CDCR built remedial plans around the Mental Health Services Delivery System ("MHSDS").[66] Despite the

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[60] Id at *13, citing *Coleman v Wilson*, 912 F Supp 1282, 1309 (ED Cal 1995).

[61] *Coleman*, 2009 WL 2430820 at *13, quoting *Coleman v Wilson*, 912 F Supp 1282, 1309 (ED Cal 1995).

[62] *Coleman*, 2009 WL 2430820 at *13, quoting *Coleman v Wilson*, 912 F Supp 1282, 1305 (ED Cal 1995).

[63] *Coleman*, 2009 WL 2430820 at *13, citing *Coleman v Wilson*, 912 F Supp 1282, 1306 (ED Cal 1995).

[64] *Coleman*, 2009 WL 2430820 at *13, citing *Coleman v Wilson*, 912 F Supp 1282, 1314 (ED Cal 1995). See also *Coleman v Wilson*, 912 F Supp 1282, 1314 (ED Cal 1995) (stating that in numerous cases, the CDCR transferred inmates between prisons "without even such medical records as might exist"); *Coleman*, 2009 WL 2430820 at *14 (noting the CDCR was found deficient in five necessary components for operating an adequate prison health care system, including proper screening, timely access to appropriate levels of care, an adequate medical record system, proper administration of psychotropic medication, and competent staff in sufficient numbers).

[65] *Coleman*, 2009 WL 2430820 at *15 (describing the Special Master filing twenty monitoring reports and the *Coleman* court issuing over seventy orders concerning matters at the core of the remedial process; the court's orders primarily concerned creating a sufficient number of beds in the mental health care delivery system, reducing delays in transfers to necessary levels of care and ensuring an adequate quantity of staff members.).

[66] The MHSDS plan was designed to provide four level of care: the Correctional Clinical Case Management Services program (CCCMS or 3CMS), the Enhanced Outpatient Program (EOP), Mental Health Crisis Bed (MHCB) Placement, and DMH Inpatient Hospital Care. The CCCMS level of care was given to inmates whose symptoms were under control or in partial remission and could function in the general prison population, administrative segregation, or segregated housing units. The EOP level of care was for inmates suffering from acute onset of a serious mental disorder characterized by increased delusional thinking and hallucination among other symptoms, and who were unable to function in the general prison population, but did not need twenty-four-hour care. The MHCB was for inmates who were impaired and/or dangerous to others as a result of mental illness, or who were suicidal and required twenty-four-hour nursing care. DMH care was for inmates who could not be successfully treated at a lower level of care. *Coleman*, 2009 WL 2430820 at *15.

MHSDS, the CDCR was unable to allocate enough beds at the Enhanced Outpatient Program, Mental Health Crisis Bed, and inpatient levels of care.[67] The court also found that the CDCR's plans failed to address the state's needs for the future.[68]

3. "Need-narrowness-intrusiveness" in *Coleman*.

In issuing its prisoner release order, the three-judge panel began its analysis by stating that "[f]ederal courts have long recognized that [prison] population reduction orders may sometimes be necessary to ensure constitutional prison conditions."[69] After listening to the opinions of experts and considering other evidence, the court decided that overcrowding was the primary cause of the constitutional violations at issue in both *Plata* and *Coleman*.[70] Additionally, the evidence led the court to conclude that overcrowding was such a systematic problem that requiring the release of prisoners was acceptable under the scope of release and form of release criteria of the need-narrowness-intrusiveness inquiry.

a) Scope of release in Coleman. In determining that a constitutional violation existed, the courts in *Plata* and *Coleman* looked to historical as well as current information about overcrowding in the entire CDCR system and changes in California's legal system. The court in *Coleman* noted that California's prison population increased by more than 750 percent since 1970, reaching 160,000 in adult prisons in 2006.[71] The court explained that the growth in California's prison population was due in large part to the state's adoption of determinate sentencing

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[67] Id at *16 (noting that, despite the court having issued numerous orders requiring more mental health care beds, once the state's prison population reached more than 160,000 in 2006, the shortage of space reached a "crisis level").

[68] Id.

[69] *Coleman*, 2009 WL 2430820 at *28, citing as examples *Duran v Elrod*, 713 F2d 292, 297 (7th Cir 1983) (upholding a district court's order requiring a reduction in the population of the Cook County Department of Corrections, finding that the order was sensitive to the principles of federalism and that the district court acted reasonably to ease a critical problem of overcrowding); *Newman v Alabama*, 683 F2d 1312, 1321 (11th Cir 1983) (finding that since Alabama's county jails were unconstitutionally overcrowded, a cap on inmate population struck the proper balance between the duty of the district court to remedy constitutional violations and the right of the State to administer its prison and parole systems).

[70] *Coleman*, 2009 WL 2430820 at *62.

[71] Id at *19.

in the 1970s and an inability to prepare inmates for return to society.[72]

The court also cited the failure of legislative plans to reduce unconstitutional overcrowding in issuing its release order. While California planned on increasing the number of beds and basic resources in prisons that grew beyond capacity, the CDCR made no provision for the expansion of medical care space.[73] In response to the medical issues presented by overcrowding, Governor Schwarzenegger issued an emergency proclamation in 2006 that included a proposal for building two new prisons.[74] However, the California legislature rejected all of the Governor's proposals.[75] Thereafter, Governor Schwarzenegger used his authority under the California Emergency Services Act to transfer inmates to correctional facilities in other states.[76] The lack of action by the state legislature and Governor Schwarzenegger's declaration of a state of emergency supported the court's determination that unconstitutional overcrowding would continue. Thus the court used legislative failure to justify its implementation of a prisoner release order.

Additionally, the court felt the prisoner release order was justified despite the fact that inmates other than those with medical conditions or mental illnesses would be affected by the injunctive relief.[77] The court reasoned that any release order would affect inmates outside of the *Plata* and *Coleman* classes and, as a result, the relief ordered by the court could not be considered overly broad for that reason alone.[78] Similarly, the court also confronted the fact that ameliorating overcrowding alone may not improve the quality of health care and other medical services received by the *Coleman* and *Plata* class members. The court reasoned that the PLRA does not require that the prisoner release order alone will resolve the constitutional violation.[79] Instead, the order need only be an element of the remedy. Thus the court concluded that a system-wide remedy in the form of a per-

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[72] Id at *20.

[73] Id at *22.

[74] *Coleman*, 2009 WL 2430820 at *23–24.

[75] Id.

[76] Id at *24. See also id, citing *CCPOA v Schwarzenegger*, 163 Cal App 4th 802 (2008) (noting the proclamation withstood a challenge in state court, in part because Schwarzenegger's declaration of emergency was in response to conditions that presented extreme peril to prisoners and others).

[77] *Coleman*, 2009 WL 2430820 at *77.

[78] Id.

[79] Id at *53.

centage reduction of prisoner population in all CDCR facilities was appropriate.[80] In requiring the reduction of the prison population, the court relied on the testimony of experts who stated that the likelihood of bringing the CDCR into compliance with the Constitution increases as the prison population nears 100 percent of the system's design capacity.[81]

b) Form of release in Coleman. Despite conceding that a prisoner release order would affect inmates beyond the members of the *Plata* and *Coleman* classes, the court held that a prisoner release order is a permissible form of relief.[82] The court looked to the Supreme Court's praise of the district court in *Bounds v Smith*.[83] The *Coleman* court explained that in *Bounds* the district court held that the state's failure to provide legal research facilities unconstitutionally denied its inmates access to courts.[84] The Supreme Court commended the district court for fashioning an injunctive remedy that left the state to choose which method would most "easily and economically" fulfill its duty.[85] Since the three-judge panel in *Coleman* did not specify how the state should release its prisoners, the panel compared the relief it offered in *Coleman* and *Plata* to the relief in *Bounds*.[86]

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[80] Id at *76–77, citing *Armstrong at* 870, quoting *Lewis*, 518 US at 359, for the proposition that "the scope of injunctive relief is dictated by the extent of the violation established" and that system-wide relief is only appropriate when the Constitutional injustice is "widespread enough to justify system wide relief."

[81] *Coleman*, 2009 WL 2430820 at *79.

[82] *Plata*, 2007 WL 2122657 at *3 (stating that while the Receivership made some progress, the court did not have to wait years in order to determine whether the Receiver's plans would succeed or fail).

[83] *Coleman*, 2009 WL 2430820 at *77–78.

[84] Id at *77, citing *Bounds v Smith*, 430 US 817, 818 (1977).

[85] *Coleman*, 2009 WL 2430820 at *77, quoting *Bounds*, 430 US at 818–19.

[86] See *Coleman*, 2009 WL 2430820 at *78, *20 (listing numerous options left open to the state, namely: diverting nonviolent offenders and technical parole violators from prison, using a risk and needs assessment tool to match inmates with resources and programming, expanding rehabilitative programs, reforming California's determinate sentencing system, transferring low-risk prisoners to community-based reintegration facilities, establishing a sentencing commission, reforming parole, creating partnerships between state and local correction agencies, requiring that all programs be based on solid research evidence, and promoting public awareness regarding California's prison system). See also id, quoting *Bounds*, 430 US at 832–33 (stating that the district court's remedy "scrupulously respected the limits on [the court's] role" and preserved the prison administrators' "wide discretion within the bounds of constitutional requirements").

B. The Common-Law Approach to "Need-Narrowness-Intrusiveness"

There are significant differences between the "totality-of-the-circumstances" approach to need-narrowness-intrusiveness and the court's approach under the PLRA in *Coleman*. The court in *Coleman* described the PLRA as the codification of common-law prisoner release standards.[87] This assertion is generally true for the bedrock principles of the scope and form of release standards. The major difference, however, between the common-law approach and *Plata* and *Coleman* is the considerations that are taken into account when analyzing whether the relief is narrow in scope and form. Specifically, the court in *Coleman* openly considered factors beyond the conditions of the prison and prison system in question while the totality-of-the-circumstances approach, as explained in *Rhodes v Chapman*, is narrower.[88]

The totality-of-the-circumstances approach, as described by the concurrence in *Rhodes*, dictates that courts consider whether conditions of confinement, either singly or in combination, are unconstitutional under the Eighth Amendment.[89] Additionally, the concurrence extended the approach to determining whether prison conditions are humane.[90] While the concurrence in *Rhodes* said that contemporary standards should be considered when determining what constitutes humane prison conditions, the concurrence suggested a narrow approach to considering what constitutes humane prison standards. Rather than considering societal norms about what constitutes humane treatment, the concurrence relied on expert testimony and facts about prison conditions to determine what constitutes humane treatment for inmates.[91] In essence, the totality-of-the-circumstances approach seems to consider whether prisons are humane in light of other prisons, rather than in terms of societal standards as a whole.[92] By limiting courts' considerations to the situations within prisons, the approach to prisoner release orders exemplified in

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[87] *Coleman*, 2009 2430820 at *30 (quoting the legislative record describing the PLRA as "not a departure from current jurisprudence concerning injunctive relief").

[88] See *Rhodes*, 452 US at 362–64 (Brennan concurring).

[89] *Id* at 363 (Brennan concurring). See also *Laaman v Helgemoe*, 437 F Supp 269, 322–23 (D NH 1977) (stating even if no single condition of confinement would be unconstitutional in itself, "exposure to the cumulative effect of prison conditions may subject inmates to cruel and unusual punishment").

[90] *Rhodes*, 452 US at 362–64 (Brennan concurring).

[91] Id at 363–64.

[92] Id.

Rhodes severely limits the factors courts can take into account when analyzing the scope and form of relief elements of need-narrowness-intrusiveness.

C. The Significance of the Different Approaches—Among Common Law, *Coleman*, and *Plata*—to the "Need-Narrowness-Intrusiveness" Requirement

The factors that a court considers under the need-narrowness-intrusiveness test can affect whether the relief offered is deemed appropriate in scope and form. Under the scope element of need-narrowness-intrusiveness, different considerations can affect whether courts determine that prison conditions are constitutionally adequate. Additionally, the approaches also differ as to whether the relief offered is sufficiently limited to the injuries alleged by plaintiffs. Concerning the form of relief component of the need-narrowness-intrusiveness test, the PLRA makes it clear that courts should consider the effect on the public when issuing prisoner release orders.[93] This requirement, however, is not an element of the totality-of-the-circumstances approach which is largely confined to considering conditions within prisons or prison systems.[94] This open-ended statutory command gives the court considerable leeway in determining whether prisoner release orders are permissible.

1. Scope of relief: *Coleman* and the "totality-of-the-circumstances" approaches to constitutionally adequate conditions and limited scope of relief.

Whether courts can consider conditions external to prisons or prison systems can have a great effect on whether a court determines a prison to have constitutionally inadequate conditions. In order for courts to determine whether the scope of relief offered is appropriate, the court must first recognize a constitutional violation. In the case of prisons, courts agree on the general requisites that should be used to determine whether prison conditions meet the Eighth Amendment's requirements. The words "cruel and unusual" in the Eighth Amendment are very open and vague. Courts have interpreted the Eighth Amendment as only requiring that prisons provide the

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[93] 18 USC § 3626(a)(1)(A).

[94] *Rhodes*, 452 US at 363 (1981) (Brennan concurring).

"minimum level" of medical care.[95] The Supreme Court has described the Amendment as flexible and dynamic.[96] According to the Court, the Eighth Amendment is aimed at avoiding the infliction of unnecessary pain or disproportionate punishment for a crime,[97] and that its meaning is derived from "evolving standards of decency."[98]

An examination of the court's interpretation of the PLRA in *Coleman* and *Plata* and the totality-of-the-circumstances approach reveals that courts have offered different standards for determining whether prison conditions are constitutionally adequate. While the court in *Coleman* and the totality-of-the-circumstances approach both recognize that the Eighth Amendment standards is not static, they offer vastly different approaches as to what factors should be considered in determining whether a prison system violates a constitutional right.[99] In *Coleman* the court openly cited the poor economy and potential reductions on prison spending as influencing its determination that the CDCR would not be able to remedy constitutionally inadequate prisons.[100] Thus the court in *Coleman* considered the constitutionality of prison conditions in light of circumstances beyond the prison and prison system at issue. The court was willing to consider how factors like legislative gridlock or a declining economy influence the constitutionality of prison conditions.

Conversely, the totality-of-the-circumstances approach only takes into consideration how prison conditions influence prisoners' circumstances.[101] Unlike the *Coleman* approach, the totality-of-the-circumstances approach is entirely inward looking and judges the adequacy of prison conditions on the current internal workings of prisons and prison systems. That is, the totality-of-the-circumstances approach asks whether the conditions of a given prison, when taken together, are unconstitutional. The approach does not look beyond the conditions of the prison at issue. Thus, in determining whether prison conditions are unconstitutional, the approach does not consider whether a legislative or executive proposal will alleviate constitutional violations.

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[95] See *Coleman*, 2009 WL 2430820 at *4.

[96] *Gregg v Georgia*, 428 US 153, 171 (1976).

[97] Id at 173; *Coker v Georgia*, 433 US 584, 592 (1977).

[98] *Trop v Dulles*, 365 US 86, 101 (1958) (plurality opinion).

[99] *Coleman*, 2009 WL 2430820 at *2–3; *Rhodes*, 452 US at 346.

[100] *Coleman*, 2009 WL 2430820 at *2.

[101] *Rhodes*, 452 US at 362–64.

Additionally, the court's approach in *Coleman* and the totality-of-the-circumstances approach can lead to different results when considering whether the remedy is limited to the injuries brought by the plaintiffs in court. Arguably, this is where the relief in *Coleman* differs from the relief offered by the Court in *Bounds*. In *Bounds*, the totality-of-the-circumstances approach led the Court to fashion a remedy that would only affect members of the suing class. The Court held that prisons in North Carolina would have to give inmates adequate access to the means necessary to file legal claims.[102] Of course, providing access to courts for prisoners may have added additional costs to the prison system that would have indirectly affected taxpayers in the state. Still, the ordered relief would have primarily affected prisoners who were members of the *Bounds* plaintiff class.

In sharp contrast, the court in *Coleman* openly conceded that its relief would affect prisoners who did not suffer physical or mental illness.[103] This is problematic because, as the court in *Coleman* noted, the relief granted should be as narrow as possible in scope in remedying the ills complained of by the plaintiff class.[104] Thus the prisoner release orders in *Coleman* may fail under the scope of relief prong because of their breadth.

2. Form of relief: *Coleman* and the "totality-of-the-circumstances" approach to public welfare.

The PLRA clearly requires courts to consider how a prisoner release order will affect the public while the totality-of-the-circumstances approach does not have a similar requirement.[105] The responsibility for considering public welfare is a statutory charge that gives courts tremendous leeway in balancing whether a prisoner release order is adequate in form and sufficiently narrow. Congress has given courts very little guidance as to what public-interest factors should be considered. Such an open statutory charge can lead to varying conclusions among courts as to whether prisoner release orders should be issued.

This is especially problematic when considering that the court in *Coleman* merges the public welfare test into the form of relief analysis. As written in the PLRA, the court is to consider the public interest after determining that a prison violates a con-

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[102] *Bounds*, 430 US at 818–19.

[103] *Coleman*, 2009 WL 2430820 at *77.

[104] Id at *76–77.

[105] Compare 18 USC § 3626(a)(1)(A), with *Rhodes*, 452 US at 362–64.

stitutional right and when trying to fashion a remedy that is sufficiently limited in scope and form. Congress has entered a vast amount of subjectivity into the need-narrowness-intrusiveness inquiry by permitting the public-interest analysis to influence the determination of whether a prisoner release order is narrow in form.

The significance of this subjectivity is evident when deconstructing the court's declaration of the remedy in *Coleman* in comparison to the relief the Supreme Court praised in *Bounds*. The court in *Coleman* claims that its remedy is sufficiently narrow in light of *Bounds* because it leaves the means of implementing a prisoner release order to the governor and legislators.[106] The situation in *Bounds*, however, is distinguishable from *Plata* and *Coleman*. In *Bounds* the court considered whether prisons gave inmates adequate ability to access courts. While the court noted the creation of adequate law libraries as a constitutionally acceptable method of insuring inmates had access to courts, the court left other options available to the state. Thus, by confining their decision to whether prisons adequately remedied the violation of a fundamental constitutional right, the court in *Bounds* issued relief that was narrow in form.[107]

The *Bounds* decision, however, may not be comparable to *Coleman* because the lower court in *Bounds* did not consider factors external to prisons in reaching its decision. This is largely because the totality-of-the-circumstances approach does not recognize public welfare as an element of need-narrowness-intrusiveness. Greater still, the effect on the public was not directly relevant to determining whether prisoners should have access to courts. Arguably, if the lower court had considered such issues the Supreme Court may have deemed the order inappropriate in form. The *Coleman* court made a very different decision than the court in *Bounds* by considering factors beyond prison conditions in issuing its prisoner release orders.

The consideration of public welfare as part of the form of relief inquiry makes the court's determination that its relief meets the need-narrowness-intrusiveness standard questionable. While the court left the method for releasing prisoners open to the state, the issuance of the order confined the means by which the unconstitutional lack of medical and mental health care could be remedied. The court's opinion makes it clear that considering the

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[106] *Coleman*, 2009 WL 2430820 at *77–78.

[107] *Bounds*, 430 US at 818–19.

effect on the public of the release order led to the issuance of the relief. The court decided that the state and local communities would be able to cope with an influx of physically and mentally ill citizens.[108] This is especially problematic when considering that the legislative history of the PLRA reveals that Congress enacted the statute in part to curb federal courts placing the burden of costly injunctive relief on states. In issuing its release order the court used considerations beyond those that would be permitted under the totality-of-the-circumstances test to issue a prisoner release order.

III. THE SOLUTION

The PLRA approach to need-narrowness-intrusiveness, as exemplified by the court in *Plata* and *Coleman*, is clearly different than the totality-of-the-circumstances approach. The fact that the court in *Coleman* believes that it is merely applying common-law principles of injunctive relief reveals that courts are unclear as to how need-narrowness-intrusiveness should be defined under the PLRA. Arguably, neither the *Coleman* approach or the totality-of-the-circumstances approach is adequate given the need for states to reconfigure their prison systems in light of the current economic recession. Therefore, an ideal approach to the PLRA need-narrowness-intrusiveness standard would offer relief that is sufficiently narrow in scope and form while being sensitive to the constitutional rights of prisoners.

A. Scope of Relief: Ensuring That System-Wide Relief Benefits Members of the Plaintiff Class

In order to meet the requirement that relief be sufficiently narrow in scope, the court should only issue injunctive relief that is certain to benefit members of the plaintiff class. As evidenced in *Bounds*, the totality-of-the-circumstances approach embodies this principle by looking solely into the conditions of prisons when fashioning relief. The approach in *Coleman*, however, is slightly more ambivalent as to whether relief offered will directly affect the plaintiff class. It is certainly true that a prisoner release order is likely to affect persons other than members of the plaintiff class. Yet, the court in *Coleman* used this rationale to defend issuing a prisoner release order that could have no impact on persons suffering from an unconstitutional lack of health care.

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[108] *Coleman*, 2009 WL 2430820 at 167–78.

The court's prisoner release order gave the CDCR too much discretion as to which prisoners could be released. Thus, the CDCR could decrease the population of prisons to the court-stipulated level while not improving the medical care available to inmates.

The court could solve this problem by requiring the CDCR to release inmates who are members of the plaintiff class. Clearly, if the CDCR releases people who suffer from inadequate health care as a result of prison overcrowding, these persons will no longer be subject to unconstitutional prison conditions. Of course, a court placing such a requirement on a prisoner release order is likely to be too restrictive under the form of relief element of the need-narrow-intrusiveness requirement. The court would clearly be restricting legislative or executive decision making by stating exactly who can be released.

Still, as a second option, the court in *Coleman* could preserve the scope of relief requirement by maintaining that the CDCR must release prisoners in such a way that will alleviate the negative impact unconstitutional overcrowding has on prison health care. This requirement would ensure that members of the plaintiff class are the targets of the prisoner release orders. Additionally, this would give legislatures and executives enough discretion in determining how to implement a prisoner release order. Rather than depend on obscure numbers about desirable prison population size set by the court, this approach would focus directly on how prison populations affect prisoners. Thus, the court would succeed in offering system-wide relief that is sufficiently narrow in breadth as a means of remedying overcrowding.

B. Form of Relief: The Economy, the Public-Interest Requirement under the PLRA, and Confining Judicial Discretion

The court should take into consideration whether a prisoner release order is in the best interest of the state economically. Undoubtedly, the PLRA addition of public welfare as a consideration for issuing injunctive relief is significant. Yet considering that the term "public welfare" encompasses such a broad domain, courts that follow the example set by the three-judge panel in *Coleman* are not likely to be able to consider all the ways in which the public could be affected by a prisoner release order. Additionally, the court incorrectly used the public-welfare element of the PLRA to consider economic factors in determining whether the form of release satisfied the need-narrowness-intrusiveness test. Despite this error, economic factors should

always be considered in determining whether a court's injunctive relief is sufficiently narrow in form. By no means does this suggest that courts should perform an in-depth analysis of state budgets. Instead, courts should consider evidence presented by the state and special circumstances like the current economic decline in determining whether granted relief is narrow in form. Thus courts should find a medium between the *Coleman* approach and the totality-of-the-circumstances approach by letting states consider the best financial means that can be used to improve the conditions of prisons.

Of course, this approach may be problematic because it would permit the CDCR to maintain unconstitutional conditions if it is financially unable to remedy these situations. This problem, however, will exist regardless of whether the court demands that the CDCR remedy prison conditions. If a court binds a legislature or executive to give relief that is economically unviable then the relief granted is not only too broad in form but it is also impractical. The financial condition of states will always influence the quality of conditions that prison facilities can supply.

Moreover, courts considering the economic condition of states may actually improve the ability of prison systems to give inmates constitutionally adequate conditions. In *Coleman*, for example, the court chose not to let the role that the declining economy played in preventing the completion of new prisons influence its decision. If courts issue prisoner release orders without taking into account such considerations states may not try to build additional prisons or alleviate unconstitutional prison conditions. Instead, executives or legislatures may rely on courts to regulate prison populations through release orders. Not only would this allow states to abdicate this largely legislative and executive authority to the judicial branch but it may also lead to a strain on judicial resources. Therefore, the consideration of economic effects on prison conditions may improve the constitutional quality of detention centers.

CONCLUSION

The Prison Litigation Reform Act of 1995 offers a statutory framework for when courts can issue prisoner release orders. The PLRA, however, varies significantly from the common-law approach to injunctive relief described as the totality-of-the-circumstances approach. The breadth of considerations that the *Coleman* approach allows in determining need-narrowness-intrusiveness permits courts to issue prisoner release orders that

are not sufficiently narrow in scope or form. Conversely, the totality-of-the-circumstances approach is not flexible enough given the updated method for issuing injunctive relief offered in the PLRA and the current economic decline. Therefore, courts should issue prisoner release orders in such a way that will respect the need-narrowness-intrusiveness standard and allow legislators and executives to fashion cost-effective remedies to unconstitutional prison conditions.